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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

LAURA BERNADETTE HAYWARD,

Plaintiff and Respondent,

v.

THOMAS POZDRO,

Defendant and Appellant.

A143939

(San Mateo County
Super. Ct. No. CIV 527654)

Defendant Thomas Pozdro appeals from the denial of his special motion to strike, as a Strategic Lawsuit Against Public Participation (SLAPP) (Code Civ. Proc., § 425.16.),¹ the complaint of his ex-wife Laura Bernadette Hayward. The complaint alleges defamation and related claims arising out of Pozdro's accusations of tax fraud and disability insurance fraud. We shall affirm the order denying the special motion upon concluding, as did the trial court, that Pozdro's statements were not made in connection with a public issue.

Statement of Facts

Hayward and Pozdro were married in March 2004 and are the parents of a son they adopted in 2007. Pozdro moved from California to Las Vegas, Nevada in August 2011 and, in September, petitioned in San Mateo County Superior Court for dissolution of marriage. The dissolution action is ongoing, with pending claims concerning child support and property division.

¹ All further section references are to the Code of Civil Procedure except as noted.

Both parties are employed as commercial pilots, Pozdro with Allegiant Air and Hayward with United Parcel Service (UPS). In late 2011, with the dissolution proceeding pending, the parties disagreed about whether to characterize certain income as community or separate when filing their 2010 tax returns. In November 2011, Pozdro texted Hayward accusing her of misrepresenting community income as his separate income and stating that she had “48 hrs to split everything” upon her return or he would report her to the Internal Revenue Service for tax fraud.

In June 2012, Pozdro wrote to Hayward’s employer and trade union to report her “Suspected Disability Insurance Fraud” over the previous 10 years when she was on “three medical leaves from work” for “various, invisible, and un-detectable injuries.” Pozdro wrote: “I am currently in the process of divorcing her and she is strategically abusing the long term disability program to her advantage to retain custody of our 5 year old son.” Pozdro said he is in “a struggle to have any visitation rights at all versus a woman who is home all day long receiving disability checks in excess of \$9,000 a month while she entertains her son, daughter, friends, takes vacations and even downhill snow skis. She has taken no less than eight vacations since the beginning of her current leave.” Around February 2013, Pozdro wrote a similar letter to Hayward’s long term disability insurance provider, Aetna Life Insurance Company.

Hayward filed this lawsuit in March 2014, suing Pozdro for defamation, intentional and negligent interference with contractual relationships, intentional and negligent infliction of emotional distress, and extortion. Pozdro’s accusations of disability fraud made to her employer, union and disability insurer—by letter and telephone—are the basis of all causes of action with the exception of the extortion cause of action. The extortion cause of action is based on allegations that Pozdro threatened to report her for tax and disability fraud “to obtain a financial advantage.” In April 2014, Hayward filed a first amended complaint to add a cause of action for declaratory relief, seeking a judicial declaration “that there is an inadequate evidentiary basis” to support Pozdro’s “contention that [Hayward] has committed disability fraud.”

Pozdro answered the first amended complaint in June 2014 in propria persona and, shortly afterwards, his new wife, Nevada attorney Crystal Eller, was admitted as counsel pro hac vice and undertook his representation.² (Cal. Rules of Court, rule 9.40.) In July 2014, Pozdro filed an untimely anti-SLAPP motion with a memorandum of points and authorities in excess of page limitations. (§§ 425.16, subd. (f), 1013, subd. (a).) The court denied the motion without prejudice, granting Pozdro an extension of time to file the motion in proper form.

In September 2014, Pozdro filed the anti-SLAPP motion that is the subject of this appeal. Pozdro claimed the causes of action stated against him arose out of “conduct in furtherance of the exercise of the . . . constitutional right of free speech in connection with a public issue or an issue of public interest.” (§ 425.16, subd. (e)(4).) He asserted that the public issue is insurance fraud. Hayward opposed the motion, denying the existence of a public issue.

The trial court denied the motion. The court found that the defamation, interference with contractual relationships, and infliction of emotional distress causes of action do not concern a public issue as the claims arose “from Defendant’s statements specifically about Plaintiff and her disability claims.” The statements were not “about insurance fraud in general nor did they implicate any other employee or some system-wide fraud that concerned or affected a large number of persons.” As to the extortion cause of action, the court found it to be “based solely on a single text message from defendant to plaintiff threatening to report her for tax fraud and on threats to ruin plaintiff’s career by reporting her for disability fraud. The statements at issue do not constitute protected activity within the meaning of the anti-SLAPP statute because they were not made to any third party, but only to plaintiff. Further, the threats concerned only

² In separate appeals, Hayward challenges Eller’s pro hac vice admission as trial counsel here and in the related family law case. Eller has not applied to appear pro hac vice on appeal. Pozdro is represented on appeal by Ropers Majeseki Kohn Bentley, which associated in as lead counsel in the superior court in December 2014.

plaintiff's tax and disability issues, not some public issue that affected more than one person."

Pozdro timely filed notice of appeal.

Discussion

The Legislature enacted the anti-SLAPP law to address "a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." (§ 425.16, subd. (a).) To that end, the law provides: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).)

"The analysis of an anti-SLAPP motion thus involves two steps. 'First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one "arising from" protected activity. (§ 425.16, subd. (b)(1).) If the court finds such a showing has been made, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim.' [Citation.] 'Only a cause of action that satisfies both prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning and lacks even minimal merit—is a SLAPP, subject to being stricken under the statute.' " (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 819-820, italics omitted.) Review on appeal is de novo. (*Ibid.*)

"In the first step of the anti-SLAPP analysis, the court decides only whether the claims arise from protected activity. The court reviews the parties' pleadings, declarations and other supporting documents to determine what conduct is actually being challenged, not to determine whether the conduct is actionable." (*Coretronic Corp. v. Cozen O'Connor* (2011) 192 Cal.App.4th 1381, 1389.) Pozdro contends that Hayward's defamation cause of action and related claims arise from protected activity, specifically

“conduct in furtherance of the exercise of the . . . constitutional right of free speech in connection with a public issue or an issue of public interest.” (§ 425.16, subd. (e)(4).)

There is no statutory definition of “public issue.” Cases that have found a public issue are those where “the subject statements either concerned a person or entity in the public eye [citations], conduct that could directly affect a large number of people beyond the direct participants [citations], or a topic of widespread, public interest.” (*Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 924 (*Rivero*).) It is undisputed that Pozdro’s statements do not fit either of the first two categories but Pozdro argues that his statements fit the third category, as statements concerning a topic of widespread, public interest: insurance fraud.

The argument is unavailing. Pozdro told his ex-wife’s employer, union and insurer she was feigning disability and told his ex-wife he would report her allegedly false tax and disability claims. The communications concerned alleged misdeeds of a single, non-public person and were directed to that party and several third parties with a direct financial interest in the matter. One cannot gain the expansive protections of the anti-SLAPP law by the simple expedient of abstracting broad, tangentially related public issues from narrowly focused communications among private parties.

Attempts of this nature have been rejected. In *World Financial Group, Inc. v. HBW Ins. & Financial Services, Inc.* (2009) 172 Cal.App.4th 1561, 1565-1566, a financial services corporation sued its former employees and a competing company upon allegations that the former employees used trade secrets and confidential information to solicit the corporation’s customers and employees. Denial of defendants’ anti-SLAPP motion was affirmed on appeal. (*Id.* at p. 1575.) The court rejected defendants’ argument that “the speech and conduct giving rise to [plaintiff’s] claims was protected activity because ‘the pursuit of lawful employment . . .’ and ‘workforce mobility and free competition’ are matters ‘of public interest and protected public policy.’ ” (*Id.* at p. 1569.) The court observed: “While employee mobility and competition are undoubtedly issues of public interest when considered in the abstract, one could arguably identify a strong public interest in the vindication of any right for which there is a legal

remedy. ‘The fact that “a broad and amorphous public interest” can be connected to a specific dispute is not sufficient to meet the statutory requirements’ of the anti-SLAPP statute. [Citation.] By focusing on society’s general interest in the subject matter of the dispute instead of the specific speech or conduct upon which the complaint is based, defendants resort to the oft-rejected, so-called ‘synecdoche theory of public issue in the anti-SLAPP statute,’ where ‘[t]he part [is considered] synonymous with the greater whole.’ [Citation.] In evaluating the first prong of the anti-SLAPP statute, we must focus on ‘the specific nature of the speech rather than the generalities that might be abstracted from it.’ ” (*Id.* at p. 1570.)

Similarly, in *Rivero*, *supra*, 105 Cal.App.4th at page 919, a union asserted that the publications giving rise to a public university employee’s complaint for libel and slander involved an issue of public interest because “unlawful workplace activity is a matter of public interest particularly where it occurs at a publicly financed institution.” In rejecting that argument, the court reasoned “if the Union were correct, discussion of nearly every workplace dispute would qualify as a matter of public interest. We conclude, instead, that unlawful workplace activity below some threshold level of significance is not an issue of public interest, even though it implicates a public policy.” (*Id.* at p. 924; accord *Bikkina v. Mahadevan* (2015) 241 Cal.App.4th 70, 81-84 [defendant’s statements to faculty and a small group of scientists alleging plaintiff published false data on carbon sequestration was not a matter of public issue despite public interest in climate change generally].)

In claiming that his statements implicate an issue of public interest, Pozdro relies upon a number of cases applying the anti-SLAPP statute to disputes that do not have universal impact upon the public at large. All of these cases, however, concern conduct that could directly affect a large number of people beyond the direct participants. (*Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th 450, 465-468 [safety concerns about youth basketball coach communicated between members of a parent-teacher organization, league officials and parents of the team members]; *Cross v. Cooper* (2011) 197 Cal.App.4th 357, 382-383 [tenants informed prospective buyers that a registered sex offender lived in neighborhood, a publicly posted

fact of interest to all those considering a move to the area]; *Terry v. Davis Community Church* (2005) 131 Cal.App.4th 1534, 1543, 1547-1548 [church pastor disseminated a report to about 100 people substantiating inappropriate sexual relationship by church youth group leaders and recommending measures to prevent recurrence].)

The statements here do not concern a topic of widespread, public interest nor conduct directly affecting a large number of people beyond the direct participants. As the trial court rightly noted, the causes of action “arise from defendant’s statements specifically about plaintiff and her disability claims. The statements were not about insurance fraud in general nor did they implicate any other employee or some system-wide fraud that concerned or affected a large number of persons. The alleged statements concerned a single allegation of disability fraud committed by one person against one employer, one insurance company and one employees’ union. The statements were not of a public issue or public interest.” Likewise, the statements underlying the extortion cause of action were made to Hayward alone and concerned only her tax and disability claims, “not some public issue that affected more than one person.”

Disposition

The order is affirmed.

Pollak, Acting P.J.

We concur:

Siggins, J.

Jenkins, J.